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McArthur



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Stay, Inc.

**File:** B-247606

**Date:** May 29, 1992

Karl Dix, Jr., Esq., and George Papaioanou, Esq., Smith, Currie & Hancock, for the protester.  
John Opitz, Esq., Department of Housing and Urban Development, for the agency.  
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is sustained where agency's exclusion of the second highest rated technical proposal left only one proposal in the competitive range, since record shows that discussions with the rejected offeror reasonably could be expected to result in making the proposal acceptable without major rewrite, especially where successful offeror's proposal contained many of the same weaknesses which were corrected through discussions.

### DECISION

Stay, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DU100C000016792, issued by the Department of Housing and Urban Development (HUD), for guard services. The protester alleges that by rejecting its proposal, the agency essentially made a sole-source award, and that to the extent that there were weaknesses in its proposal, those same weaknesses were present in the initial proposal of the successful offeror.

We sustain the protest.

On July 25, 1991, the agency issued the solicitation for a firm, fixed-price contract to provide management, supervision, manpower, equipment, and supplies necessary to provide guard services for an initial 1-year period, with

four 1-year options. The solicitation provided for award to the offeror whose proposal received "the best overall score" and which, considering cost, was most advantageous to the agency.

The solicitation contained the following technical evaluation criteria: qualification of the offeror (management staff, corporate experience, and information on key management officials), 30 points; operating plan for accomplishing the required services (technical approach and plan to accommodate fluctuations in workload), 20 points; recruiting and staffing plan (sources, training, and proposed working relationship with agency personnel), 20 points; quality assurance plan, 20 points; and understanding the scope of work (recognition of potential problems and the soundness of proposed solutions), 10 points.

The solicitation instructed offerors to submit proposals in two parts, a technical response in Part I and cost and pricing data in Part II, specifying the detailed information that offerors should provide. For example, under qualification of the offeror, firms were to provide their dates of founding/incorporation, a list of recent contracts, and resumes for key personnel, with references and phone numbers. The operating plan for accomplishing the required services was to discuss the offeror's methodology for ensuring performance in accordance with requirements, and contain a staffing plan. The recruiting and staffing plan, part three of the proposal, primarily concerned recruiting, continuing training, and the filling of supervisory slots. Section M of the RFP, which set forth the evaluation factors, also indicated that evaluators would consider the offeror's proposed relationship with agency personnel in its evaluation. The solicitation also required a quality assurance plan to include equipment maintenance and replacement, uniform maintenance, timeliness of services, and inspection procedures, as well as a "concise but complete analysis of the performance requirements as the offeror understands them," to demonstrate the offeror's understanding of the scope of work.

The agency received 11 proposals, which it referred to its source evaluation board on August 30. Evaluators assigned the protester an evaluation score of 56 points, which was the second highest technical score received. Evaluators advised the contracting officer that only one offeror, Gilbert Security Service, Inc., which received a score of 69.33 points in the evaluation, had submitted an initial proposal that was technically acceptable. Since Gilbert had also proposed the lowest initial price, the agency decided to negotiate a contract with Gilbert and eliminated the other offerors, including the protester, from the

competitive range on November 6. The agency provided the protester with a debriefing on January 30, and this protest followed.<sup>1</sup>

The protester contends that the agency improperly evaluated its proposal, that the agency failed to follow the evaluation method, criteria, and factors detailed in the solicitation. The protester asserts that contrary to the solicitation's heavy emphasis on technical factors, the agency essentially selected the lowest cost initial proposal for a sole-source award. A comparison of its proposal with that of the successful offeror, the protester argues, demonstrates that there were only minor differences in technical merit and that, if the agency had provided an opportunity to improve its proposal through discussions, the protester would have had a reasonable chance for award.

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and supported by the record and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. Federal Acquisition Regulation § 15.609(a) (FAC 90-7) requires that the competitive range be determined on the basis of cost or price and other factors that were stated in the solicitation and consist of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. See Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. Generally, an agency need not include in the competitive range offers that are unacceptable as submitted and which would require major revisions to become acceptable. Aydin Corp., B-224354, Sept. 8, 1986, 86-2 CPD ¶ 274. We believe that in this case the record does not support the agency's determination that the protester's proposal would have required a major revision to be made acceptable and that, under these circumstances, the establishment of a competitive range consisting of only one offeror was unreasonable.

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<sup>1</sup>The agency contends that the protest should have been filed within 10 days after the protester knew that its proposal had been rejected and is therefore untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992). The protest is timely, however, because it is based on information received for the first time during the January 30 debriefing and was filed within 10 working days of that date. Vine, McKinnon & Hail, B-245164, Dec. 18, 1991, 91-2 CPD ¶ 561.

As the protester points out, many of the eight weaknesses found by evaluators to exist in the protester's proposal also existed in the Gilbert proposal. For example, the agency found that the protester failed to adequately address its proposed plans for initial and continuing training for all supervisors and employees. In its sole-source discussions (two rounds) with Gilbert, the agency specifically advised Gilbert to "[f]urther discuss plan for initial and continuing training." The agency also found that the protester had failed to provide a plan documenting the working relationship of the successful contractor with the contracting officer, the government technical representative, and other agency employees.<sup>2</sup> In its discussions with Gilbert, the agency specifically advised Gilbert to "[f]urther discuss your proposed working relationship with the Government Technical Represent[ative], Contracting Officer, and other [agency] personnel."

The record also shows that both Stay and Gilbert omitted information on places and dates of incorporation from their proposals and both failed to provide all information on the resumes for key personnel under the qualification of the offeror factor. Since the agency allowed Gilbert to correct all initial weaknesses in these areas, it does not appear that even the agency considered correction of these weaknesses to constitute a major revision. Nor, based upon our review of the evaluation and the protester's proposal, does it appear that a major revision was necessary.

The agency also contends that Stay's listing of recent contracts did not demonstrate experience that related to HUD's "unique" requirements. However, beyond the fact that the guard services must take place in a "large office building," experience that is in fact demonstrated in the protester's proposal, the record contains no evidence of what these "unique" requirements might be. The agency also argues that the protester did not provide information on its rationale for recruitment or the percentages of each recruitment method to be used even though the record shows that the protester's proposal, which received 16 of 20 points for recruiting and staffing, was acceptable in this area, or at the very worst, susceptible to correction that would not have required a major revision. Neither matter was an appropriate basis for excluding the protester from the competitive range.

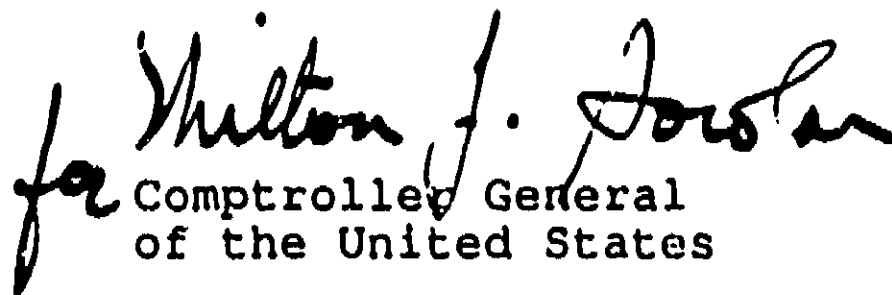
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<sup>2</sup>The protester received a perfect score of three points out of three awarded in the technical evaluation subfactor for its proposed working relationship with agency employees. Nevertheless, the evaluation board advised the contracting officer that the proposal was deficient in this area.

It is clear that in the view of evaluators, the most significant deficiency in the protester's proposal related to the area of the operating plan for accomplishing the required services. In this area, the agency's chief concern related to problems that the protester had in 1985 in beginning performance of a guard contract at the Hoffman Building in Alexandria. While the agency may have valid concerns in this regard, there is no indication in the evaluation scheme that past performance would be of such weight that any negative performance would result in an unacceptable proposal. In its proposal, the protester discussed this situation fully and candidly, providing a full discussion of the lessons learned from this experience and the measures taken to prevent further problems. The record shows that the protester is currently performing successfully on the Hoffman Building contract, and contains no evidence that the agency contacted the Department of Defense for an independent assessment of the protester's performance. The record does not support rejection of the protester's proposal on this ground alone.

The agency also complains that the protester's proposal did not follow the solicitation format and was hard to understand. This was true to some extent, but we do not find that the protester's proposal presented a major problem in comprehension. To the extent the presentation left evaluators uncertain in any respect, the agency does not point to anything that could not have been cleared up through discussions. We believe therefore that it was unreasonable to reject the protester, and to negotiate what was in effect a sole-source award to Gilbert. We therefore sustain the protest.

We are recommending by letter of today to the Secretary of Housing and Urban Development that the agency reopen discussions with the protester and Gilbert, for the purpose of resolving any uncertainties or weaknesses in the proposals, and request best and final offers. In the event that the Gilbert proposal is no longer most advantageous to the government, we recommend that the agency terminate the contract and make an award in accordance with the factors set forth in the solicitation. We also find that the protester is entitled to recover its costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d). Stay should submit its detailed and certified claim for such costs to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f).

  
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